IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

Ismael Zambrano,)
Plaintiff,) No. 8:13-cv-3130-RMG
v.	ORDER
Immigration and Customs Enforcement; Agent Del Barrio,)
Defendants.))

This matter is before the Court on the Report and Recommendation ("R&R") of the Magistrate Judge recommending that the Court dismiss this action pursuant to 28 U.S.C. § 1915. (Dkt. No. 15). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Plaintiff is a pre-trial detainee in the Greenville County Detention Center. Plaintiff filed this action pro se to remove a detainer lodged by Immigration and Customs Enforcement after Plaintiff was incarcerated. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings. Under established local procedure in this judicial district, the Magistrate Judge conducted a careful review of the complaint pursuant to the provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319 (1980); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978). The Magistrate Judge then issued the present R&R recommending this action be dismissed without prejudice and without service of process. (Dkt. No. 15). Plaintiff then filed a

letter with the Court acknowledging his right to file objections, but making no arguments responding to the legal conclusions of the R&R. (Dkt. No. 17).

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate judge with instructions." *Id.*

Discussion

After review of the record and the R&R, the Court finds that the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and adopts the R&R as the order of the Court. The Court agrees with the Magistrate Judge that under 8 U.S.C. §§ 1252(a)(5) and (b)(9), this Court lacks jurisdiction to hear this case. Furthermore, this action fails to state a claim because "the detainer [is] nothing more than a request that [Greenville County] authorities notify ICE prior to [Plaintiff's] release" and does not affect Plaintiff's status as a pre-trial detainee. *Nasious v. Two Unknown B.I.C.E. Agents*, 366 Fed. App'x 894, 896 (10th Cir. 2010) (affirming dismissal of *Bivens* claim related to ICE detainer). Finally, Plaintiff has filed no objections that question the correctness of the Magistrate Judge's conclusions. ¹

¹ "If the individual has a complaint regarding the detainer . . . , he or she should contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253)." http://www.ice.gov/news/library/factsheets/detainer-faqs.htm.

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Conclusion

For the reasons set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 15). Accordingly, this action is dismissed without prejudice and without service of process.

AND IT IS SO ORDERED.

Richard Mark Gerge

United States District Court Judge

January <u>7</u>, 2014 Charleston, South Carolina